

EXHIBIT D

**MINUTES OF MEETING
WAYNE COUNTY ELECTION COMMISSION
TUESDAY, SEPTEMBER 13, 2016 – 3:15 P.M.
COLEMAN A. YOUNG MUNICIPAL BUILDING - ROOM 700A
2 WOODWARD AVENUE, DETROIT, MICHIGAN 48226**

Call to Order: The meeting was called to order at 3:23 p.m., Tuesday, September 13, 2016.

Members present: Honorable Freddie G. Burton, Jr., Chief Judge, Probate Court
Honorable Cathy M. Garrett, Secretary- Wayne County Clerk
Honorable Eric Sabree, Member – Wayne County Treasurer

Members absent: None

Also present: Janet Anderson-Davis, Assistant Corporation Counsel
Delphine G. Oden, Director, Wayne County Elections
Jennifer Redmond
Robert Davis
Greg P. Mahar
Jina Sawani
Lori Higgins
Mary Kovari
Mary Ellen Gurewitz
John Pirich
Meg Logelin
Penny Bailer
Tonja Long
Gina Avery-Walker
Mark Toaz
Tim Beckett

Agenda item: **Consideration of Agenda approval.**

Board action on agenda item: Chair Burton requested a motion to approve the agenda. Member Sabree, duly supported by Member Garrett, moved to adopt the agenda as submitted. The motion was adopted unanimously by a voice vote.

Agenda item: **Approval of Minutes of August 3, 2016**

Board action on agenda item: Chair Burton requested a motion to approve the minutes of the meeting held on August 3, 2016. Member Garrett, duly supported by Member Sabree, moved to approve the minutes of the meeting held on August 3, 2016. The

motion was adopted unanimously by a voice vote.

Agenda item: Consider Legal Challenge submitted on behalf of Desmond White and Robert Davis

Asst. Corporation Counsel Anderson-Davis gave a summary to the commission regarding the details of the legal challenge. She indicated that three candidates for the Detroit Community School District election were being challenged by Desmond White and Robert Davis. Two of the challenges were regarding a missing precinct number on the Affidavit of Identity for candidates Penny Bailer and Robert Earl Thomas and one challenge was to the residency of candidate Mary Kovari.

Chair Burton requested a motion regarding the legal challenge to Penny Bailer and for discussion of the challenge. Chair Burton duly supported by Member Garrett moved to approve the challenge to remove Penny Bailer because the precinct number is missing from the affidavit. Discussion ensued.

Robert Davis spoke regarding the challenge. John Pirich, attorney for Penny Bailer, spoke in opposition to the challenge.

Board action on agenda item: The motion was adopted unanimously by a voice vote.

Board action on agenda item: Chair Burton requested a motion regarding the legal challenge to Robert Earl Thomas. Chair Burton duly supported by Member Garrett moved to approve the challenge to remove Robert Earl Thomas. The motion was adopted unanimously by a voice vote.

Board action on agenda item: Chair Burton requested a motion regarding the legal challenge to Mary Kovari and for discussion of the challenge. Member Sabree duly supported by Chair Burton moved to reject the challenge to Mary Kovari.

Robert Davis spoke regarding the challenge. Mary Ellen Gurewitz, attorney for Mary Kovari, spoke in opposition to the challenge.

Board action on agenda item: Ayes: Burton and Sabree - Nays: Garrett

Agenda item: Acceptance of the November 8, 2016 General Candidate list as presented by the Wayne County Clerk

Board action on agenda item: Chair Burton requested a motion for Acceptance of the November 8, 2016 General Candidate list as

presented by the Wayne County Clerk. Member Garrett duly supported by Member Sabree, moved for acceptance of the November 8, 2016 General Candidate list as presented by the Wayne County Clerk. The motion was adopted unanimously by a voice vote.

Agenda item: Approval of Ballot Printing for the November 8, 2016 General Election

Board action on agenda item: Chair Burton requested a motion for approval of Ballot Printing for the November 8, 2016 General Election. Member Sabree duly supported by Member Garrett, moved for approval of Ballot Printing for the November 8, 2016 General Election. The motion was adopted unanimously by a voice vote.

Agenda item: New Business. None.

Agenda item: Public Comment. None.

Agenda item: Adjournment.

Board action on agenda item: Chair Burton requested a motion to adjourn. Member Sabree, duly supported by Chair Burton, moved to adjourn the meeting. The motion was adopted unanimously by a voice vote.

Meeting adjourned at 3:55 p.m.

STATE OF MICHIGAN

WAYNE COUNTY ELECTION COMMISSION

The WAYNE COUNTY ELECTION COMMISSION MEETING,
Taken at Two Woodward Avenue, Room 700A,
Detroit, Michigan,
Commencing at 3:21 p.m.,
Tuesday, September 13, 2016,
Before Valerie Jo Lohr, CSR-6212.

1 WAYNE COUNTY ELECTION COMMISSION

2
3 HON. FREDDIE BURTON, Chairman

4 CATHY GARRETT, Wayne County Clerk

5 ERIC SABREE, Wayne County Treasurer

6
7 DELPHINE ODEN, Director of Elections

8 JANET ANDERSON-DAVIS, Corporation Counsel

9
10 ALSO PRESENT:

11 Jennifer Redmond

12 Robert Davis

13 Greg P. Mahar

14 Jena Salam (illegible)

15 Lori Higgins

16 Mary Kovari

17 Mary Ellen Gurewitz

18 John Pirich

19 Meg Coughlin

20 Penny Bailer

21 Tonja Long

22 Gina Avery-Walker

23 Mark Tgaz (illegible)

1 Detroit, Michigan

2 Tuesday, September 13, 2016

3 3:21 p.m.

4
5 HON. FREDDIE BURTON: Okay. Let us call
6 this
7 meeting to order, the meeting of the Wayne County
8 Election Commission.

9 Will you call the role, please.

10 MS. DELPHINE ODEN: Treasurer Sabree?

11 MR. ERIC SABREE: Here.

12 MS. DELPHINE ODEN: Clerk Garrett?

13 MS. CATHY GARRETT: Here.

14 MS. DELPHINE ODEN: Judge Burton?

15 HON. FREDDIE BURTON: Here.

16 MS. DELPHINE ODEN: You have a quorum.

17 HON. FREDDIE BURTON: Thank you very much.

18 Could I have a motion to adopt the agenda as
19 offered?

20 MR. ERIC SABREE: So moved.

21 MS. CATHY GARRETT: Support.

22 HON. FREDDIE BURTON: After properly being
23 supported, all those in favor signify by saying aye,
24 please. Aye.

25 MS. CATHY GARRETT: Aye.

1 MR. ERIC SABREE: Aye.

2 HON. FREDDIE BURTON: All right. The agenda
3 is adopted as offered.

4 Do we have a motion to approve the minutes
5 as
6 offered from the August 3rd, 2016 meeting?

7 MR. ERIC SABREE: So moved.

8 MS. CATHY GARRETT: Support.

9 HON. FREDDIE BURTON: All right. It's been
10 properly moved and supported. Any comments or
11 questions? We'll proceed to a vote. All those in
12 favor please signify by saying aye? Aye.

13 MS. CATHY GARRETT: Aye.

14 MR. ERIC SABREE: Aye.

15 HON. FREDDIE BURTON: Those opposed. Very
16 well then. The minutes are approved as offered.

17 Let's move to Item Number 5. It says
18 consider legal challenge submitted on behalf of
19 Desmond

20 White and Robert Davis. Before we proceed, I wanted
21 to

22 call on our attorney, Miss Anderson-Davis, to provide
23 instructions as to the duties and responsibilities of
24 this body concerning this issue.

25 MS. ANDERSON-DAVIS: Well, briefly, the

1 legal

2 challenge is to three affidavits. For two of the
3 affidavits, it is alleged that the candidates did not
4 insert their precinct number on the affidavits and
5 therefore under the Berry v. Garrett case, this board
6 must remove their names from the ballot or they'll not
7 get placed on ballot, not put them on the ballot.

8 For the challenge, it is alleged that the
9 candidate put on the affidavit that she had been a
10 resident six days before the filing deadline, that
11 under the law she must have been an elector. To be an
12 elector, she must have been a resident 30 days. By

13 the

14 face of the affidavit, one can determine she hasn't
15 been a resident 30 days. Therefore, similarly, her
16 name should be removed from the ballot or not get
17 placed on the ballot, not put on the ballot.

18 In the Berry v. Garrett case, the Court of
19 Appeals listed several statutes that they use to place
20 the duty on this Board. Significantly, the Berry

21 court

22 did not really indicate who has that duty, whether it
23 is the county clerk or the County Election Commission.
24 They simply said county defendants.

25 What they indicated was that under MCL 168.6

1 -- .559(1), candidate must file an affidavit of
2 identity. The affidavit of identity must contain the
3 ward and the precinct that's on the 558(2). If the
4 affidavit is filed with someone other than the county
5 clerk, the local clerk or the county clerk and also
6 sends us back a list of candidates to the county
7 clerk,
8 that's 168-349.

9 The county clerk certifies to this Election
10 Commission the candidates whose petitions meet the
11 requirements together with their party and their
12 office. That's under 168-552(1). No candidate's name
13 is printed on the primary ballot unless he has
14 complied
15 with all other requirements of the Act. And that's
16 168.550.

17 The court concluded that under the facts as
18 submitted by all parties of the Berry case, those two
19 candidates did not have a precinct number on their
20 affidavits, so therefore the Commission or the county
21 defendants had the duty to correct errors in the
22 primary election ballot. And they use 168.567.

23 In the instance case, this Election
24 Commission is not faced with a primary election but
25 rather a general election, so some of the statutes

1 differ. A school district election is governed by the
2 provisions that generally govern elections, 168.301.

3 A

4 school district holds its regular elections at the
5 general November election, 168.642C. The local clerk
6 certifies the names of all local candidates to the
7 county clerk. In this instance, the local clerk would
8 be the City of Detroit clerk, Janice Winfrey,
9 168.6468(1).

10 Instead of filing nominating petitions, the
11 school board members may pay a filing fee of \$100 and
12 file the affidavit of identity, which is what these
13 three candidates at issue did, as 168.303(4). A
14 nominated petition is subject to examination under
15 Section 552, which is the statute used by the Berry
16 court, and that's cited MCL 303 -- 380.303(5).

17 County clerk certifies, again, to the
18 Commission the candidates whose petition meets the
19 requirements together with the party and the office.
20 And the Commission shall prepare the half-printed
21 ballots containing the names of all candidates

22 properly

23 certified to the Board. That's 168.689.

24 So what is gleaned from all of that is that
25 this Commission can look at the face of an affidavit

1 and determine that the candidate is not qualified.

2 And

3 this Commission has the duty to not put that person's
4 name on the ballot, or if the person is already on the
5 ballot, to remove that person from the ballot.

6 HON. FREDDIE BURTON: Okay. Thank you very
7 much. Having heard from Miss Anderson-Davis, do we
8 have a motion at least for the purposes of discussion
9 concerning Item Number 5?

10 MS. CATHY GARRETT: So moved.

11 HON. FREDDIE BURTON: That we consider the
12 legal challenge submitted? Are you asking that we
13 agree with the challenge or disagree with the
14 challenge?

15 MS. CATHY GARRETT: My understanding was I
16 thought that you were requesting a motion to have
17 further discussion about it.

18 HON. FREDDIE BURTON: Well, no. It's
19 actually a motion to be offered so that we can
20 determine whether or not we will vote on an issue. We
21 can open it up for discussion upon submission of the
22 motion.

23 MR. ERIC SABREE: So moved.

24 We should discuss whether we're going to

25 vote

1 on it.

2 HON. FREDDIE BURTON: No. No. No.

3 MR. ERIC SABREE: Is that what you're asking
4 me?

5 HON. FREDDIE BURTON: I think for purposes
6 of
7 moving forward, we should have a substantive motion
8 that identifies whether we agree or disagree with the
9 challenge that's offered. There are three challenges
10 as I understand it, and so we -- if we have a motion
11 we
12 can then -- and we have support, we can then have a
13 discussion and even perhaps hear from the party or
14 parties that are here on this matter.

15 So do we have a motion? I suppose the chair
16 will need to make a motion then. Relative to --
17 what's
18 the first item for this referenced and the precinct
19 number where there's a --

20 MS. ANDERSON-DAVIS: I believe the first
21 one is --

22 HON. FREDDIE BURTON: Okay. All right. As
23 chair, I will move that the challenge be approved as a
24 precinct number is missing from that affidavit. Is
25 there support to that motion?

1 MS. CATHY GARRETT: I support.

2 HON. FREDDIE BURTON: It's been properly
3 moved and supported. Do we have any discussion
4 concerning this matter?

5 Mr. Davis, this is your challenge, is that
6 correct?

7 MR. ROBERT DAVIS: Yes, your honor.

8 HON. FREDDIE BURTON: Okay. I would ask all
9 those who are going to speak, if you could keep your
10 comments under two minutes we would appreciate it.
11 Okay. Mr. Davis?

12 MR. ROBERT DAVIS: Chief Judge Burton, to
13 the
14 honorable members of the Election Commission, my name
15 is Robert Davis. And I believe this is probably the
16 first time me and attorney Janet Anderson-Davis
17 actually agree on a point of law. I believe that she
18 surmised the issues very pointedly and directly on
19 point.

20 As indicated in the legal challenge
21 submitted

22 on my behalf as well as on behalf of Desmond White by
23 attorney Andrew Paterson, it's quite clear on the face
24 of the affidavit of identities that were submitted by
25 the listing candidates that they're not in compliance

1 with 168.558 of the Michigan Election Law, which is
2 applicable to all school board candidates. And in
3 particular as attorney Anderson-Davis indicated on the
4 record, this honorable body which was a party to the
5 Court of Appeals action Berry v. the Honorable Wayne
6 County Clerk, Cathy M. Garrett, which was a published
7 opinion that is bound by the decision reached by the
8 panel of the Michigan Court of Appeals, and notably,
9 that decision, that appeal to the Michigan Supreme
10 Court.

11 So arguably if this honorable body were to
12 choose to ignore the binding precedent, which I'm
13 pretty sure would not considering we're here in this
14 Commission, other courts will be bound to follow the
15 decision, unfortunately. The face of the petition
16 speaks for itself. Thank you, your honor.

17 HON. FREDDIE BURTON: Miss Bailer, do you
18 have anything you would like to add at this time, or
19 anyone representing you?

20 MR. JOHN PIRICH: John Pirich. I'll be
21 appearing on behalf of --

22 HON. FREDDIE BURTON: Yes, counsel.

23 MR. JOHN PIRICH: Let me, if I can, put the
24 context in -- well, first of all, I was counsel of
25 record along with Miss Anderson-Davis in the case

1 that's been referenced by the parties previously.

2 I'd like to make two or three points.

3 Number

4 one, our client filed her affidavit on July 26. The
5 affidavit's been pending. It's been available for
6 public inspection at any time during that period of
7 time. It's not until September the 9th, last Friday,
8 that this particular complaint was filed. And I

9 turned

10 to my good friend and colleague, Miss Gurewitz,
11 because

12 we just finished litigation in Macomb County Circuit
13 Court involving Representative Farrington's challenge
14 to a candidate -- excuse me, Representative
15 Farrington's wife was a candidate for the House of
16 Representatives and I represented or our firm
17 represented Miss Farrington.

18 And that case involved information that we
19 discovered in mid-August, and we promptly filed two
20 lawsuits, first in the Court of Claims, and had a
21 decision rendered by Judge Cynthia Stephens on August
22 30th, 2016. Then we refiled in the Macomb County
23 Circuit Court and after argument we had a decision
24 rendered I believe it was September 7th before Judge
25 Caretti in the Macomb County case.

1 Let me read to you from those two opinions,
2 because the theory and Doctrine of Laches applies to
3 the palpable delay in the challenge being filed by
4 Mr. Davis, number one. Number two, even if this body
5 were to act to do something untoward, we're actually
6 limited with no time because the ballets are about to
7 be printed and about to be sent. So even if the
8 Commission would grant the relief being sought, we
9 would in all likelihood have no remedy to be able to
10 pursue timely appeals.

11 I can tell you both in the Farrington
12 decision and in the previous case referenced, which
13 came -- started before the Wayne County Board and
14 ended
15 up with the Wayne County Circuit Court and finally the
16 Michigan Court of Appeals, we had the better part of
17 two months. But let me read them in, what was said
18 with regard to Laches.

19 HON. FREDDIE BURTON: You're going to need
20 more than two minutes, aren't you?

21 MR. JOHN PIRICH: Yeah, just a few seconds.

22 In the Caretti decision that was issued last
23 week, he said the Doctrine of Laches applies and
24 precludes Farrington's requested equitable relief.

25 And

1 even though he notes that we brought forth information
2 that we said occurred in mid-August, he said the
3 allegations if proven to be creditable, defendants had
4 a duty to act with reasonable diligence in vindicating
5 their rights by -- and by waiting to bring the
6 challenge at such a late date that they -- that they -

7
8 the prejudice resulting to defendants and the
9 electorate caused by the delay is palpable since the
10 ballots were being -- on the eve of being printed,
11 Laches precluded any legal relief being granted.

12 That's exactly the same language -- by the
13 way, Judge Caretti cited Schwartz versus Secretary of
14 State 393 Michigan 42. It's exactly the same language
15 that Judge Stephens cited in her August 30th decision
16 in regard to the same decision. And, again, to my

17 good

18 friend Miss Gurewitz in the straight party ticket case
19 that we've just been involved in, the Doctrine of
20 Laches arose there. The state asserted that the claim
21 that Miss Gurewitz brought was too late. The U.S.
22 District Court, the U.S. Court of Appeals for the

23 Sixth

24 Circuit and the United States Supreme Court all found
25 that that was not a viable defense, if they had done

1 it

2 early enough and properly enough within time. To file
3 on the 60th day before the election and have a hearing
4 now on the 55th day before the election is palpable.
5 And it's not only a disservice to our client to bring
6 the challenge, but to the electorate.

7 To sit on your hands and seek a remedy at

8 the

9 midnight hour should not be justified, so we
10 respectfully request that the request for relief by

11 Mr.

12 Davis or Mr. Paterson not be granted and that the
13 candidate's name be printed as requested. Thank you.

14 HON. FREDDIE BURTON: Thank you. All right,
15 thank you both very much.

16 Miss Anderson-Davis, do you have anything

17 you

18 wish to add in response to the arguments that have

19 been

20 offered by Mr. Davis and Mr. Pirich?

21 MS. ANDERSON-DAVIS: No.

22 HON. FREDDIE BURTON: Do we have any

23 discussion that members of the Commission wish to

24 offer

25 at this time? Do we have someone else who wants to

1 say

2 something? Counsel?

3 MS. MARY ELLEN GUREWITZ: I was going to
4 address my --

5 HON. FREDDIE BURTON: Counsel, would you
6 give
7 your appearance for the record, please.

8 MS. MARY ELLEN GUREWITZ: Oh, Mary Ellen
9 Gurewitz appearing for Mary Kovari. I don't know if
10 you're considering the challenge to Miss Kovari at
11 this
12 time or if --

13 HON. FREDDIE BURTON: No, we're not. Not
14 yet.

15 MS. MARY ELLEN GUREWITZ: Okay.

16 HON. FREDDIE BURTON: We're going to give
17 you
18 a chance to argue.

19 Is there anything else before we --

20 MS. MARY ELLEN GUREWITZ: Although, I could
21 add something to what Mr. Pirich has said since we
22 both

23 litigated the case -- two cases in which he relied.

24 And that is that I furnished those cases to Miss
25 Anderson-Davis this morning and asked if she could

1 give
2 them to the Election Commission, and she indicated
3 that
4 she had. I have additional copies if anybody needs
5 them. And that is the two Farrington cases.

6 HON. FREDDIE BURTON: Thank you very much.

7 All right. If nothing else, if there are no
8 additional comments, let us proceed to a vote.

9 All those in favor of supporting this
10 motion,
11 please signify by saying aye. Aye.

12 MS. CATHY GARRETT: Aye.

13 MR. ERIC SABREE: Aye.

14 HON. FREDDIE BURTON: Those opposed --
15 obviously, it's unanimous. All three have voted to
16 support the challenge, so the motion passes as
17 offered.

18 The second item identifies which candidate?

19 MS. DELPHINE ODEN: Robert Earl Thomas.

20 HON. FREDDIE BURTON: All right, Robert Earl
21 Thomas. Do we have a motion? I'll, again; move that
22 the challenge offered by Mr. Davis to the Detroit
23 Community School Board district school board
24 candidate,
25 that it be approved.

1 Is there a support?

2 MS. CATHY GARRETT: Support.

3 HON. FREDDIE BURTON: Do we have any further
4 discussion?

5 It's consistent with the offer of arguments
6 by Mr. Davis and Mr. Pirich concerning this matter.

7 Do
8 we have any comments by members of this panel?

9 If not, let's proceed to a vote. All those
10 in favor, please signify by saying aye. Aye.

11 MS. CATHY GARRETT: Aye.

12 MR. ERIC SABREE: Aye.

13 HON. FREDDIE BURTON: All right. It's
14 unanimous and the motion passes.

15 The third item we have involves a challenge
16 as to whether or not the resident was a resident for

17 30
18 days, is that correct?

19 MS. ANDERSON-DAVIS: Yes.

20 HON. FREDDIE BURTON: And do we have a
21 motion? We do not have a motion? Do we have a motion
22 at least for purposes of discussion as to whether or
23 not we agree or disagree with the third challenge?

24 MR. ERIC SABREE: So moved.

25 HON. FREDDIE BURTON: So moved to -- do we

1 agree or disagree?

2 MR. ERIC SABREE: Disagree.

3 HON. FREDDIE BURTON: Okay. We disagree

4 with

5 the challenge. All right. Is there a support?

6 Support.

7 Do we have discussions? Mr. Davis?

8 MR. ROBERT DAVIS: Thank you, Honorable

9 Judge

10 Burton. As your counsel indicated prior to the first
11 challenge, this condition after a few weeks of looking
12 at the face of the petition -- I mean of the affidavit
13 of identity -- and as your counsel indicated, on the
14 face of the affidavit of identity, it's quite clear
15 from Miss Kovari herself that she was only a resident
16 for six days.

17 This body does not have the statutory
18 authority to look beyond the face of the affidavit of
19 identity, and there's a number of cases involving this
20 body, including myself, regarding the duties of this
21 Commission of not being able to look beyond the face

22 of

23 the affidavit of identity. And on Miss Kovari's
24 affidavit of identity, she states that she has only
25 been a resident of the county for six days. And that

1 was as of July 19, 2016.

2 In my case of the published opinion of Davis
3 v. Chapman, the Michigan Court of Appeals concluded
4 that in order to be a candidate for the office of
5 school board a person not only has to be a registered
6 elector by the filing deadline date but also have to
7 be
8 a qualified elector by the filing deadline date. And
9 in my case, Davis v. Chapman, which is also a
10 published
11 opinion cited in the legal challenge, the 30 days runs
12 from the date -- the filing deadline date, 30 days
13 back.

14 And in this case, the filing deadline date,
15 I
16 believe, was July 26 of 2016, I believe. And if you
17 count back 30 days from July 26, 2016, Miss Kovari
18 would have to have been a resident of the County of
19 Wayne and of the City of Detroit within the County of
20 Wayne by June 26, on or before June 26. And by her
21 own
22 admission under penalty of perjury, she stated on that
23 affidavit that she had only been as of July 19, 2016 a
24 resident of the County of Wayne six days. So it's
25 impossible that she could have been a resident of the

1 City of Detroit 30 days.

2 And as your learned counsel indicated at the
3 beginning of this proceeding, you have to go on the
4 face of the petition -- I mean, the affidavit of
5 identity.

6 HON. FREDDIE BURTON: Okay. Does anyone
7 want
8 to respond?

9 MS. MARY ELLEN GUREWITZ: Yes, I do.

10 HON. FREDDIE BURTON: Okay.

11 MS. MARY ELLEN GUREWITZ: Again, it's Mary
12 Ellen Gurewitz appearing on behalf of Mary Kovari.

13 I would reiterate Mr. Pirich's argument. It
14 appears that you have already rejected it, but I think
15 that Laches certainly bars this action. It is
16 astounding to me that Mr. Davis and his counsel would
17 bring an action on September 9th when by their own
18 pleadings they say they were aware sometime in August
19 of what they characterize as defects in these
20 affidavits of identity. And that's both applicable to
21 -- or that is applicable to all three. But I -- you
22 cannot, I believe, tell from the affidavit of identity
23 filed by Miss Kovari on July 19th that she was not a
24 resident, because there's an inconsistency in that
25 affidavit.

1 She checks -- correctly checks the box
2 saying

3 I'm registered and qualified to vote at the address
4 above. So she does say that she's a registered and
5 qualified elector. And there is the inconsistent
6 statement made that she's a resident of a county for
7 six days. She -- we did submit to you her narrative,
8 which says that she moved into the City of Detroit
9 where she had lived previously and had only left to
10 take care of an ill mother, that she had moved in more
11 than 30 days before she filed the affidavit of
12 identity.

13 And she put at the direction of the clerk in
14 the City of Detroit clerk's office, she put that six
15 days because that was when she registered to vote. So
16 she was referring there to the registration date but
17 not to the time in which -- that she lived in the
18 county.

19 So there is on the face of it an
20 inconsistency which I think you need to resolve. And
21 you can resolve that by a reference to the information
22 which we have furnished to you that she was in fact a
23 resident of the county for more than 30 days. That
24 issue has been raised and you need to consider the
25 evidence regarding the issue of her residency.

1 HON. FREDDIE BURTON: Well, this is not a
2 court of law.

3 MS. MARY ELLEN GUREWITZ: It is not a court
4 of law, but it is brought --

5 HON. FREDDIE BURTON: But I do understand
6 our

7 duties and responsibilities and appreciate the
8 argument

9 you offer. I don't know if you have anything else you
10 would like to add at this time?

11 MS. MARY ELLEN GUREWITZ: I would only like
12 to add that these affidavits of identity are somewhat
13 complicated, that people go to the clerk's office and
14 ask for advice, that Miss Kovari did that. She went
15 to

16 the office of the Detroit City clerk. She consulted
17 with persons in that office who advised her what she
18 should put on the affidavit of identity. She followed
19 that advice. And I think it would be grossly unfair
20 to

21 exclude her from the ballet where she did follow that
22 advice and where you can see that she certified here
23 that she was a registered and qualified elector.

24 HON. FREDDIE BURTON: Thank you very much.

25 I have a question for -- yeah. That's the

1 question I think I'm going to ask you is can you
2 clarify for this panel and for me what is a school
3 elector and how does it impact this pending motion
4 that's before us.

5 MS. ANDERSON-DAVIS: Right. Right before I
6 came to the meeting, I did some research, and actually
7 I'm going to talk to you, Miss Gurewitz to clarify
8 this
9 for the Board. But it seems to me that under the
10 school code, your client would be considered a school
11 elector. And if that's the case, she wouldn't have to
12 be a resident until 30 days before the November
13 election. So I just wondered if that was true or if I
14 was researching too quickly?

15 HON. FREDDIE BURTON: The statute is MCL
16 168.492.

17 MS. MARY ELLEN GUREWITZ: So the
18 registration

19 -- there are a number of inconsistencies in the
20 Michigan Election Law and complexities, which I'm sure
21 Mr. Pirich can attest to. And one of them is that in
22 order to be registered you need to be a resident 30
23 days before the next election. And the next election
24 -- it wasn't clear whether the next election was the
25 primary election or the general election.

1 Now, since there was no primary election for
2 the school board, I think that certainly it's
3 arguable,

4 as Miss Anderson-Davis says, that the next election is
5 the general election on November 8th. And she was
6 certainly a registered -- a qualified and registered
7 elector by that date.

8 HON. FREDDIE BURTON: All right. Anything
9 else, Mr. Davis?

10 MR. ROBERT DAVIS: Your honor, this question
11 was directly answered in Davis v. Chapman which your
12 counsel intervened in a published opinion which this
13 very issue was at issue. For school board candidates
14 it's quite clear, you have to be a registered and
15 qualified elector by the filing deadline. The Court
16 of
17 Appeals in that published decision of Davis v. Chapman
18 indicated that in order to be a qualified elector you
19 have to have had resided in the city for 30 days and
20 this is not -- it's 30 days.

21 The City of Detroit is within the County of
22 Wayne. Unless she's admitting today that she
23 committed

24 perjury, her affidavit, her sworn affidavit -- by the
25 way, her narrative is an unsworn statement which we're

1 required to turn into a fact-finding entity, which it
2 is not.

3 On the face of the affidavit of identity
4 going by the binding precedent of Davis v. Chapman --
5 again, I have to keep reiterating that. But the
6 school

7 elector has nothing to do with whether or not she was
8 a
9 qualified elector, which she was not per her own sworn
10 affidavit of identity.

11 MS. MARY ELLEN GUREWITZ: If I could respond
12 to that?

13 HON. FREDDIE BURTON: Very, very briefly.

14 MS. MARY ELLEN GUREWITZ: Yes. Mr. Davis is
15 referring to a general provision regarding school
16 district elections, and there has been a subsequent
17 statute providing for elections in the school district
18 of the City of Detroit in the new community school
19 district. And there was no primary election for
20 that -- for those positions. There's only the general
21 election. So it is -- the provisions on which she
22 relies are inapplicable and you should in fact look at
23 380.6(3). A school elector must be a resident on or
24 before the 30th day before the next regular or special
25 school election not before primary elections.

1 HON. FREDDIE BURTON: What does the
2 affidavit

3 indicate? Does it identify primary election or does
4 it
5 identify affidavit for --

6 MS. MARY ELLEN GUREWITZ: No. It identifies
7 the general elections because there was no primary
8 election.

9 HON. FREDDIE BURTON: All right.

10 MR. ROBERT DAVIS: Your honor, just real
11 quick. The qualification and requirements for a
12 school

13 board election are set forth in 168.302, and it
14 clearly

15 states that you have to be a qualified and registered
16 elector. Which, again -- and I'm trying to alleviate
17 any unnecessary court action. It was addressed -- it
18 was addressed directly on point by the Michigan Court
19 of Appeals in Davis v. Chapman.

20 HON. FREDDIE BURTON: All right. Thank you
21 very much, Mr. Davis.

22 MS. ANDERSON-DAVIS: I have a couple of
23 sentences. I am aware of Davis v. Chapman, but I
24 think

25 we should remember Davis v. Chapman was two or three

1 years ago. And Ms. Gurewitz is correct, the statute
2 in

3 which I'm bringing before the Board today is
4 subsequent

5 to Davis v. Chapman, so therefore it could not
6 possible

7 have been considered by that court. And I bring to
8 Miss Gurewitz' attention, maybe she can better address
9 this, MCL 168.492, which says a resident of the school
10 district on or before the 30th day before the next
11 regular school election.

12 HON. FREDDIE BURTON: All right. Anything
13 else? Anyone have anything to add?

14 MS. CATHY GARRETT: Well, I do, pretty much
15 because I'm quite confused with the fact of -- and it
16 appeared that you were placing the onus on the city
17 clerk's office as far as how they instructed a
18 candidate for a school board member to fill out an
19 affidavit. So for me, that was kind of confusing, and
20 the fact that it does state that she had lived in the
21 county for six days. So that's just problematic for
22 me, the fact that it's for a school board candidate

23 and

24 based on what you said it was as if she was relying on
25 the city clerk's office to instruct her how to fill

1 out

2 an affidavit.

3 MS. MARY ELLEN GUREWITZ: I did say that she
4 relied upon it, and she did. But as I pointed out,
5 there's an inconsistency in the affidavit. And she
6 did

7 attest to her status as a qualified and registered
8 elector, so I think that that needs to be taken into
9 account.

10 HON. FREDDIE BURTON: All right. Thank you
11 very much. All right. Any other comments before we
12 proceed to a vote?

13 All right. The motion that's before us is a
14 motion to reject the challenge to the candidacy of
15 Miss

16 Kovari. All those in favor of this motion, please
17 signify by saying aye.

18 MR. ERIC SABREE: Aye.

19 HON. FREDDIE BURTON: Aye.

20 Those opposed? Nay? All right. Then the
21 challenge is rejected by a vote of two to one.

22 I think that concludes the matters that are
23 before us relative to Item Number 5.

24 So let us proceed to Item Number 6,
25 acceptance of the November 8, 2016 general candidate

1 list as presented by the Wayne County clerk. Do we
2 have that information?

3 MR. JOHN PIRICH: Judge Burton, I'd like to
4 raise a point of clarification. We would like to
5 request that the Board at least stay effective of this
6 of the rule in regard to our client until we have an
7 opportunity to file suit in Wayne County Circuit Court
8 tomorrow morning. Because to allow you -- to allow
9 the
10 process to proceed forward to the printing without
11 having the right to have judicial review of this
12 decision would be unfair both to our client and to the
13 elector.

14 HON. FREDDIE BURTON: I don't know the legal
15 basis for the request that you're making. Can you
16 share that with us?

17 MR. JOHN PIRICH: Well, the legal basis is
18 that --

19 HON. FREDDIE BURTON: The actual legal
20 basis.

21 Not your client's position necessarily, but the actual
22 legal basis for it.

23 MR. JOHN PIRICH: Well, the basis is because
24 we have a right to appeal the decision. And if the
25 Board proceeds and authorizes the printing of the

1 ballet, our redress for -- well, first of all, the
2 county will spend an incredible amount of money to
3 reprint the ballots. Another amount of money will be
4 spent if we prevail, which we believe we clearly will.

5 HON. FREDDIE BURTON: Okay. All right. Any
6 response to this request?

7 Do we have a motion? It dies for lack of a
8 motion.

9 MR. JOHN PIRICH: Thank you very much.

10 HON. FREDDIE BURTON: You're welcome.

11 MR. ROBERT DAVIS: If I may, real quickly?

12 HON. FREDDIE BURTON: Sure.

13 MR. ROBERT DAVIS: Is it my understanding
14 that as of this date that the ballots have not been
15 printed for the November general election?

16 HON. FREDDIE BURTON: Is that correct?

17 MS. DELPHINE ODEN: Yes, that is correct.

18 HON. FREDDIE BURTON: All right. Now, as to
19 Item Number 6, do we have --

20 MS. CATHY GARRETT: Yes. The motion is that
21 this body would accept the candidates' list for the
22 November 8, 2016 general election.

23 HON. FREDDIE BURTON: Okay. All right.
24 That's your motion?

25 MS. CATHY GARRETT: Yes.

1 HON. FREDDIE BURTON: Okay.

2 MR. ERIC SABREE: Support.

3 HON. FREDDIE BURTON: Okay. Is there any
4 discussion? Okay. Hearing none, let's proceed to a
5 vote.

6 All those in favor please signify by saying
7 aye? Aye.

8 MS. CATHY GARRETT: Aye.

9 MR. ERIC SABREE: Aye.

10 HON. FREDDIE BURTON: Those opposed? Very
11 well then. Item Number 6, the motion is approved as
12 requested.

13 Item Number 7, approval of the ballet
14 printing for the November 8, 2016 general election.

15 Do we have a motion?

16 MR. ERIC SABREE: So moved.

17 HON. FREDDIE BURTON: Is there support?

18 MS. CATHY GARRETT: Yes, support.

19 HON. FREDDIE BURTON: All right. It's been
20 properly moved and supported.

21 Any discussion? Hearing none, let us
22 proceed
23 to a vote.

24 All those in favor please signify by saying
25 aye. Aye.

1 MS. CATHY GARRETT: Aye.

2 MR. ERIC SABREE: Aye.

3 HON. FREDDIE BURTON: Very well, then. This
4 motion is approved or adopted as requested.

5 Yes?

6 MS. ANDERSON-DAVIS: I just wanted to make a
7 point for the record that as you're aware that the
8 absentee ballots must be in the hands of the local
9 clerk by September the 24th, therefore, we have a
10 short

11 period of time in order to resolve whatever we have to
12 to make sure that we get it to them.

13 HON. FREDDIE BURTON: Your offering that as
14 for information for persons around table.

15 Mr. Pirich?

16 MR. JOHN PIRICH: Oh, I'm aware of that.

17 MR. ROBERT DAVIS: What was the date?

18 MS. DELPHINE ODEN: September 24th.

19 HON. FREDDIE BURTON: Okay. Is there
20 anything else? Do you have anything else that we
21 should consider before -- are we going too fast? Is
22 that what you're saying?

23 MS. DELPHINE ODEN: No. They just need to
24 pay attention.

25 HON. FREDDIE BURTON: Okay. Do we have any

1 new business?

2 All right. Any public comments anyone
3 wishes

4 to offer at this time? If not, then the chair will
5 entertain a motion to adjourn.

6 MR. ERIC SABREE: So moved.

7 HON. FREDDIE BURTON: You want to stay,
8 don't

9 you?

10 MS. CATHY GARRETT: Uh-huh.

11 HON. FREDDIE BURTON: All right. Support.

12 All those in favor, please signify by saying
13 aye? Aye.

14 MS. CATHY GARRETT: Aye.

15 MR. ERIC SABREE: Aye.

16 (The meeting was concluded at 3:55 p.m.)
17
18
19

EXHIBIT G

**MINUTES OF MEETING
WAYNE COUNTY ELECTION COMMISSION
TUESDAY, SEPTEMBER 13, 2016 – 3:15 P.M.
COLEMAN A. YOUNG MUNICIPAL BUILDING - ROOM 700A
2 WOODWARD AVENUE, DETROIT, MICHIGAN 48226**

Call to Order: The meeting was called to order at 3:23 p.m., Tuesday, September 13, 2016.

Members present: Honorable Freddie G. Burton, Jr., Chief Judge, Probate Court
Honorable Cathy M. Garrett, Secretary- Wayne County Clerk
Honorable Eric Sabree, Member – Wayne County Treasurer

Members absent: None

Also present: Janet Anderson-Davis, Assistant Corporation Counsel
Delphine G. Oden, Director, Wayne County Elections
Jennifer Redmond
Robert Davis
Greg P. Mahar
Jina Sawani
Lori Higgins
Mary Kovari
Mary Ellen Gurewitz
John Pirich
Meg Logelin
Penny Bailer
Tonja Long
Gina Avery-Walker
Mark Toaz
Tim Beckett

Agenda item: Consideration of Agenda approval.

Board action on agenda item: Chair Burton requested a motion to approve the agenda. Member Sabree, duly supported by Member Garrett, moved to adopt the agenda as submitted. The motion was adopted unanimously by a voice vote.

Agenda item: Approval of Minutes of August 3, 2016

Board action on agenda item: Chair Burton requested a motion to approve the minutes of the meeting held on August 3, 2016. Member Garrétt, duly supported by Member Sabree, moved to approve the minutes of the meeting held on August 3, 2016. The

motion was adopted unanimously by a voice vote.

Agenda item: Consider Legal Challenge submitted on behalf of Desmond White and Robert Davis

Asst. Corporation Counsel Anderson-Davis gave a summary to the commission regarding the details of the legal challenge. She indicated that three candidates for the Detroit Community School District election were being challenged by Desmond White and Robert Davis. Two of the challenges were regarding a missing precinct number on the Affidavit of Identity for candidates Penny Bailer and Robert Earl Thomas and one challenge was to the residency of candidate Mary Kovari.

Chair Burton requested a motion regarding the legal challenge to Penny Bailer and for discussion of the challenge. Chair Burton duly supported by Member Garrett moved to approve the challenge to remove Penny Bailer because the precinct number is missing from the affidavit. Discussion ensued.

Robert Davis spoke regarding the challenge. John Pirich, attorney for Penny Bailer, spoke in opposition to the challenge.

Board action on agenda item: The motion was adopted unanimously by a voice vote.

Board action on agenda item: Chair Burton requested a motion regarding the legal challenge to Robert Earl Thomas. Chair Burton duly supported by Member Garrett moved to approve the challenge to remove Robert Earl Thomas. The motion was adopted unanimously by a voice vote.

Board action on agenda item: Chair Burton requested a motion regarding the legal challenge to Mary Kovari and for discussion of the challenge. Member Sabree duly supported by Chair Burton moved to reject the challenge to Mary Kovari.

Robert Davis spoke regarding the challenge. Mary Ellen Gurewitz, attorney for Mary Kovari, spoke in opposition to the challenge.

Board action on agenda item: Ayes: Burton and Sabree - Nays: Garrett

Agenda item: Acceptance of the November 8, 2016 General Candidate list as presented by the Wayne County Clerk

Board action on agenda item: Chair Burton requested a motion for Acceptance of the November 8, 2016 General Candidate list as

presented by the Wayne County Clerk. Member Garrett duly supported by Member Sabree, moved for acceptance of the November 8, 2016 General Candidate list as presented by the Wayne County Clerk. The motion was adopted unanimously by a voice vote.

Agenda item: **Approval of Ballot Printing for the November 8, 2016 General Election**

Board action on agenda item: Chair Burton requested a motion for approval of Ballot Printing for the November 8, 2016 General Election. Member Sabree duly supported by Member Garrett, moved for approval of Ballot Printing for the November 8, 2016 General Election. The motion was adopted unanimously by a voice vote.

Agenda item: **New Business. None.**

Agenda item: **Public Comment. None.**

Agenda item: **Adjournment.**

Board action on agenda item: Chair Burton requested a motion to adjourn. Member Sabree, duly supported by Chair Burton, moved to adjourn the meeting. The motion was adopted unanimously by a voice vote.

Meeting adjourned at 3:55 p.m.